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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/020,525      | 12/14/2001  | William G. Massey III | 450-59084           | 9079             |

24197 7590 07/29/2003  
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[REDACTED] EXAMINER

VAN PELT, BRADLEY J

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3682

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                    |               |
|------------------------------|--------------------|---------------|
| <b>Office Action Summary</b> | Application No.    | Applicant(s)  |
|                              | 10/020,525         | Massey et al. |
|                              | Examiner           | Art Unit      |
|                              | Bradley J Van Pelt | 3682          |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 30 May 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-35 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 8-12 and 30-35 is/are allowed.

6) Claim(s) 1-3, 6, 13, 16, 18, 19, 21-25 and 28 is/are rejected.

7) Claim(s) 4, 5, 7, 14, 15, 17, 20, 26, 27 and 29 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 14 December 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .      6) Other: \_\_\_\_\_ .

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 22-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 22, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 13, 16, 25, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Herring (USPN 3,643,524).

Herring discloses an adjustable foot pedal assembly for a vehicle having a driver compartment comprising a wall and a floor, the pedal assembly comprising: a base (58) having

upper and lower end portions; a pedal having an upper major foot engageable surface, the pedal being pivotally coupled to the lower end portion of the base; an arm member (66) having a first end portion pivotally coupled to the pedal and extending downwardly from the pedal (curved end of 66 extends downward), the arm member being coupled to the base so as to be movable relative to the base when the pedal is pivoted toward and away from the base between a depressed position and an idle position respectively; and an adjustment mechanism (52) for coupling the upper end portion of the base to the wall of the vehicle, the adjustment mechanism being configured to selectively vary the fore-aft position of the base and the pedal from the wall of the vehicle;

the adjustment mechanism comprises a rotatable screw (52) configured to be mounted to the wall of the vehicle and a carrier bracket (flange portion at end of base 58) threadably engaging the screw and coupled to the upper end portion of the base, wherein rotation of the screw in a first direction causes the carrier bracket to move the base and the pedal away from the wall and rotation of the screw in a second direction causes the carrier bracket to move the base and the pedal toward the wall;

a segmented pedal support portion having a first upper segment (78) and a second lower segment (68), the upper segment being pivotally coupled to the lower segment to permit pivoting of the lower segment relative the floor of the vehicle; a foot pedal carried by the lower segment of the pedal support portion; and a fore-aft position adjuster carrying the upper segment of the pedal support portion and configured to be mounted to the wall of the vehicle, the fore-aft position adjuster being configured to selectively vary the fore and aft position of the pedal support portion and thereby the pedal relative the wall of the vehicle;

a vertical upper end portion (vertical portion of 58) for extending generally parallel to the wall; a horizontal lower end portion (75) for extending generally parallel to the floor; and an angled intermediate portion (66) extending between the upper end portion and the lower end portion;

the vehicle compartment further comprises a rotatable screw (52) extending from the wall and the upper end portion comprises a threaded bracket configured to engage the screw for adjusting the fore-aft position of the support upon rotation of the screw;

5. Claims 25 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Ristau (USPN 3,288,239).

Ristau discloses a support for supporting a foot pedal in a vehicle driver compartment comprising a wall, a floor and an inclined toe board extending between the wall and the floor, the support comprising: a vertical upper end portion (upper portion of 50 extends vertical see fig. 4) for extending generally parallel to the wall; a horizontal lower end portion (lower portion of 50 extends horizontal) for extending generally parallel to the floor; and an angled intermediate portion (middle portion of 50) extending between the upper end portion and the lower end portion;

the vehicle compartment further comprises a rotatable screw (36) extending from the wall and the upper end portion comprises a threaded bracket (44) configured to engage the screw for adjusting the fore-aft position of the support upon rotation of the screw.

6. Claims 13, 18, 19 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Rixon et al. (Pub. No. 2002/0053254) herein after Rixon.

Rixon discloses a segmented pedal support portion having a first upper (126) segment and a second lower segment (122), the upper segment being pivotally coupled to the lower segment to permit pivoting of the lower segment relative the floor of the vehicle; a foot pedal carried by the lower segment of the pedal support portion; and a fore-aft position adjuster (124) carrying the upper segment of the pedal support portion and configured to be mounted to the wall of the vehicle, the fore-aft position adjuster being configured to selectively vary the fore and aft position of the pedal support portion and thereby the pedal relative the wall of the vehicle;

a pedal support portion (122) having an upper end portion and a lower end portion; and foot pedal carried by the pedal support portion (118); wherein the upper end portion of the pedal support portion is configured to be mounted for vertical movement along the wall of the vehicle to permit adjustment of the vertical position of the upper end portion of the pedal support portion;

a mounting bracket (C-shaped member is bracket see fig.1) coupled to the upper end portion of the pedal support portion, the mounting bracket being configured to be slidably mounted to the vehicle wall;

a rotatable screw (124) coupled to and extending outwardly from the mounting bracket and a bracket member (126) threadably engaging the screw, the bracket member being coupled to the upper end portion of the pedal support portion, wherein rotation of the screw in a first direction causes the bracket member to move the pedal support portion and the pedal away from the wall and rotation of the screw in a second direction causes the bracket member to move the pedal portion and the pedal toward the wall.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3, 6, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herring in view of Lundberg et al. (USPN 5,133,225).

Herring discloses pedal support means (58) for engaging the pedal support surface; a pedal pivotally coupled to the pedal support means and extending generally above the pedal support means, the pedal being operable to be pivoted relative to the pedal support means between a depressed position and an idle position; means (62) for biasing the pedal to the idle position; adjustment means (52) for adjusting the position of the pedal support means and the pedal toward and away from the wall;

the adjustment means comprises a jack screw (52) configured for mounting to the vehicle wall and a positioner means (upper flange portion of support means 58) threadably engaging the screw and coupled to the pedal support means, wherein rotation of the screw in a first direction causes the positioner means to move the pedal support means and the pedal away from the wall and rotation of the screw in a second direction causes the positioner means to move the pedal support means and the pedal toward the wall.

Herring fails to disclose at least one roller rotatably mounted to the arm member, the roller being positioned for rolling contact along the base when the pedal is pivoted toward and away from the base, the roller coupling the arm member to the base; at least one roller which is

rotatably coupled to the lower end portion of the base and positioned for supporting the base on the floor of the vehicle or a rub pad placed on the floor; roller means mounted to the pedal support means and positioned for rolling contact with the pedal assembly support surface when the adjustment means is activated to adjust the position of the pedal support means toward and away from the wall; a rub pad placed on the floor of the vehicle with an upper surface comprising the pedal assembly support surface and the upper surface being in a position to engage the roller means.

Lundberg et al. shows roller means (58) mounted to a pedal support means (38) and positioned for rolling contact with a pedal assembly support surface (64); a rub pad placed (track 64 is rub pad) on the floor of the vehicle with an upper surface comprising the pedal assembly support surface and the upper surface being in a position to engage the roller means.

To modify the apparatus of Herring so as to provide rollers on the arm and base/support would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of Lundberg et al. that such an arrangement decreases the friction force between the floor and the base to ease adjustment of the pedal.

***Allowable Subject Matter***

9. Claims 8-12, and 30-35 are allowed.
10. Claims 4, 5, 7, 14, 15, 17, 20, 26, 27, and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

11. Applicant's arguments filed May 30, 2003 with respect to claim 1 have been fully considered but they are not persuasive.

Applicant submits claim 1 is allowable because, Herring neither teaches nor suggests a foot pedal assembly comprising an arm member having a first end portion pivotally coupled to a pedal and *extending downwardly* from the pedal. Herring, however, shows foot pedal assembly comprising an arm member 66 having a first end portion pivotally coupled to a pedal 60 and *extending downwardly* from the pedal. The curved portion of the arm member 66 that abuts against pedal 60 passes in a direction generally below a portion of the pedal, therefore this portion of the arm member 66 is extending downwardly from the pedal 60.

Applicant's arguments with respect to claims 2, 3, 6, 13, 16, 18, 19, 21-25, and 28 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley J Van Pelt whose telephone number is 703.305.8176. The examiner can normally be reached on M-Th 7:00-4:30, 2nd F 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Bucci can be reached on 703.308.3668. The fax phone numbers for the organization where this application or proceeding is assigned are 703.872.9326 for regular communications and 703.872.9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.2168.

BJVP  
July 23, 2003

  
DAVID A. BUCCI  
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